

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

April 8, 2021

1:33 p.m.

MEMBERS PRESENT

Senator Robert Myers, Chair
Senator Mike Shower, Vice Chair
Senator Click Bishop
Senator Peter Micciche
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 103

"An Act repealing the Alaska Marine Transportation Advisory Board; establishing the Alaska Marine Highway System Operation and Planning Board; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 103

SHORT TITLE: AMHS OPERATION & PLANNING BOARD

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/10/21	(S)	READ THE FIRST TIME - REFERRALS
03/10/21	(S)	TRA
03/25/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)
03/25/21	(S)	Heard & Held
03/25/21	(S)	MINUTE(TRA)
03/30/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)
03/30/21	(S)	Heard & Held
03/30/21	(S)	MINUTE(TRA)
04/08/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

ANDY MILLS, Special Assistant to the Commissioner

Department of Transportation and Public Facilities
Juneau, Alaska

POSITION STATEMENT: Answered questions on SB 103.

ROB CARPENTER, Deputy Commissioner
Department of Transportation and Public Facilities
Juneau, Alaska

POSITION STATEMENT: Answered questions on SB 103.

RACHEL WITTY, Chief Assistant Attorney General
Statewide Section Supervisor
Civil Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered legal questions on SB 103.

ACTION NARRATIVE

[1:33:09 PM](#)

CHAIR ROBERT MYERS called the Senate Transportation Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Kiehl, Shower, Micciche, Bishop, and Chair Myers.

SB 103-AMHS OPERATION & PLANNING BOARD

[1:33:49 PM](#)

CHAIR MYERS announced the consideration of SENATE BILL NO. 103 "An Act repealing the Alaska Marine Transportation Advisory Board; establishing the Alaska Marine Highway System Operation and Planning Board; and providing for an effective date."

[1:34:16 PM](#)

CHAIR MYERS moved to adopt Amendment 1, work order 32-GS1649\A.12:

32-GS1649\A.12
Fisher
4/5/21

AMENDMENT 1

OFFERED IN THE SENATE
TO: SB 103

BY SENATOR MYERS

Page 1, line 1, following "Act":

Insert "relating to the duties of the Department of
Transportation and Public Facilities;"

Page 1, line 2, following "Board;"

Insert "relating to the powers and duties of the Alaska Marine Highway System Operation and Planning Board;"

Page 1, line 6, through page 2, line 3:

Delete all material and insert:

"Sec. 19.65.011. Short-term and 30-year comprehensive [COMPREHENSIVE] long-range plan. The Department of Transportation and Public Facilities, in consultation with the Alaska Marine Highway System Operation and Planning [TRANSPORTATION ADVISORY] Board, shall prepare a short-term and a 30-year comprehensive long-range plan for the development and improvement of the Alaska marine highway system. The department [AND SHALL], in consultation with the Alaska Marine Highway System Operation and Planning [TRANSPORTATION ADVISORY] Board, shall revise and update the short-term comprehensive plan annually and the 30-year comprehensive long-range plan [, REVISE AND UPDATE THE PLAN] at least once every five years. The department shall submit the short-term and 30-year comprehensive long-range plans [PLAN] and revisions and updates of the plans [PLAN] to the senate secretary and chief clerk of the house of representatives and shall notify the legislature that the plans are available."

Page 4, lines 19 - 25:

Delete all material and insert:

"(d) Every five years, the board shall transmit to the governor by September 1 a report containing progress on, revisions of, and updates to the 30-year comprehensive long-range plan prepared under AS 19.65.011. The board shall include in the report marine transportation system objectives, planning assumptions, a timeline for major operations milestones, and new initiatives. When preparing the report, the board shall pay special attention to initiatives that provide strategic and operational guidance for transportation systems of a similar size and complexity."

SENATOR SHOWER objected for discussion purposes.

[1:34:24 PM](#)

CHAIR MYERS explained that Amendment 1 would define long-term plan as 30 years based on the 30 to 40-year life span of AMHS vessels. Further, Amendment 1 would extend the update for the long-range comprehensive plan to once every five years. The rationale behind this change was to allow time for the plan to work. Finally, it would make a technical change by specifying that the plan updates shall be submitted to the Senate Secretary and Chief Clerk's office rather than to submit it to the legislature.

1:35:56 PM

SENATOR KIEHL asked if these changes would correspond to DOTPF's planning cycles.

1:36:22 PM

ANDY MILLS, Special Assistant to the Commissioner, Department of Transportation and Public Facilities (DOTPF), Juneau, Alaska, responded that 30 years was consistent with the department's long-range plan schedule.

SENATOR SHOWER removed his objection.

There being no further objection, Amendment 1 was adopted.

1:37:03 PM

SENATOR SHOWER moved to adopt Amendment 2, work order 32-GS1649\A.7.

[This amendment is 53 pages in length and can be found online at <http://www.akleg.gov/basis>].

CHAIR MYERS objected for discussion purposes.

1:37:06 PM

SENATOR SHOWER explained Amendment 2. He stated that the committee previously discussed whether it was time to move AMHS's management from the Department of Transportation and Public Facilities (DOTPF) to a corporate structure. He pointed out that Amendment 2 was 53 pages in length, which shows the complexity in creating a corporate structure. Although he highlighted Amendment 2 for discussion purposes, he suggested that the best way to manage this significant change would be to introduce a separate bill to address it.

1:37:57 PM

SENATOR SHOWER highlighted that the costs associated with AMHS are already He highlighted that the state is already absorbing the costs associated with AMHS because AMHS brings in an estimated \$48

million in revenue but the state pays \$59 million to subsidize the system. One advantage of the corporate structure is to have a chief executive officer (CEO) make decisions. Another benefit could be cost savings. For example, the Inter-Island Ferry Authority operates with 70 percent revenue and 30 percent government subsidy. Further, a corporate structure would use a hub and spoke model to enhance decision-making. As previously discussed, airlines don't run empty planes. Thus, AMHS could reconsider its service level and consider providing semi-monthly service instead of weekly service since ridership declines. In addition, the state must be cautious and ensure it does not compete with private-sector freight companies. He related that the state could change direction with the Coronavirus Aid, Relief, and Economic Security Act (CARES) funding and other proposals under consideration by the legislature. For example, it could put AMHS's management under a board with the ability and experience to be responsive.

[1:41:00 PM](#)

SENATOR SHOWER acknowledged that Alaska needs a ferry system, but AMHS must be more responsive since Alaska cannot sustain the system in its current form.

[1:41:31 PM](#)

SENATOR BISHOP stated that then-Governor Egan's 1962 Transportation Plan included road-to-road connections to reduce the number of mainline ferry runs. He emphasized the need to build a road from Juneau [to Haines].

[1:42:07 PM](#)

SENATOR MICCICHE offered his view that the Operation and Planning Board (OPB) could assist the state in making decisions such as whether to create a corporation. SB 103 would create OPB and its membership could provide the necessary expertise.

[1:43:00 PM](#)

SENATOR SHOWER recalled that both union representatives agreed during public testimony that it was time to move AMHS from DOTPF's management to a corporate management structure. He characterized SB 103 as a step in the right direction.

[1:44:02 PM](#)

SENATOR KIEHL stated that he would not delve into the details since it appeared that Amendment 2 will be withdrawn. He agreed that the corporate structure was a good direction for AMHS. He pointed out that DOTPF agreed that OPB should be given sufficient authority to make a difference. He offered his support for

structuring AMHS as a public corporation to help the state achieve long-term planning and better investment decisions for the ferry system.

[1:45:24 PM](#)

CHAIR MYERS echoed that SB 103 would take the state in the right direction. He acknowledged that it might take time to set up a corporate structure.

[1:45:48 PM](#)

SENATOR SHOWER withdrew Amendment 2.

[1:46:13 PM](#)

SENATOR KIEHL moved to adopt Amendment 3, work order 32-GS1649\A.5:

32-GS1649\A.5
Fisher
4/2/21

AMENDMENT 3

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: SB 103

Page 2, line 13:

Delete "ten"

Insert "eight"

Page 2, line 15:

Delete "three"

Insert "two"

Page 2, line 17:

Delete "three"

Insert "two"

Page 5, lines 5 - 13:

Delete all material and insert:

"THE ALASKA MARINE HIGHWAY SYSTEM OPERATION AND PLANNING BOARD; STAGGERED TERMS. (a) Notwithstanding AS 19.65.220(b), enacted by sec. 2 of this Act, and AS 39.05.055, the governor shall appoint the initial public members of the Alaska Marine Highway System Operation and Planning Board to the seats established under AS 19.65.220(a)(2), enacted by sec. 2 of this Act, to staggered terms as follows:

- (1) two members shall be appointed to serve one-year terms;
- (2) three members shall be appointed to serve two-year terms; and
- (3) three members shall be appointed to serve three-year terms."

CHAIR MYERS objected for discussion purposes.

[1:46:18 PM](#)

SENATOR KIEHL explained that Amendment 3 would change OPB from an 11-member board to a 9-member board because larger boards can be unwieldy. It would remove several public members and reduce the areas of expertise from three to two, which would make the board a little leaner.

[1:47:21 PM](#)

ROB CARPENTER, Deputy Commissioner, Department of Transportation and Public Facilities (DOTPF), Juneau, Alaska, responded that DOTPF would support Amendment 3. In its internal discussions, he related that DOTPF recognized that it would be more challenging to recruit 11 members to serve. He agreed it was harder for larger boards to reach a consensus.

[1:48:03 PM](#)

SENATOR MICCICHE expressed concern that Amendment 3 would reduce board expertise from three areas to two, which will remove an area of expertise from the board. He said he supports bringing in private sector members with specific expertise since they could ultimately make better decisions for the system. He suggested a friendly amendment, on page 2, lines 15 and 17, to read "three" members to retain the expertise in marine operating, maintenance, or vessel construction and the expertise in marine-related business; and on page 2, line 13 to reduce the total public members from 10 to 8. He maintained he does not support removing individuals with business and technical skills from the two membership categories.

[1:49:42 PM](#)

SENATOR SHOWER asked whether it would affect board membership in subparagraphs (A) and (B).

[1:50:01 PM](#)

At ease

[1:50:39 PM](#)

CHAIR MYERS reconvened the meeting.

1:50:43 PM

SENATOR SHOWER asked how Amendment 3 would affect Amendment 5, not yet offered, which would also change OPB's board membership.

1:50:54 PM

SENATOR KIEHL suggested that the committee take up the amendments in order. He said he did not intend to offer a single amendment to address OPB's board members.

1:51:06 PM

SENATOR MICCICHE suggested the committee hold the comparative discussion once Amendment 5 was offered.

SENATOR KIEHL agreed to do so.

1:51:40 PM

SENATOR BISHOP asked if the sponsor of Amendment 3 considered that some members might not be able to attend all the OPM's meetings. He expressed concern that reducing the number of board members would also result in a loss of expertise of the absent members.

1:52:38 PM

SENATOR KIEHL expressed his willingness to consider the language in Amendment 3 as a potential amendment to Amendment 5. He withdrew Amendment 3.

1:53:17 PM

SENATOR SHOWER moved to adopt Amendment 4, work order 32-GS1649\A.8:

32-GS1649\A.8
Fisher
4/2/21

AMENDMENT 4

OFFERED IN THE SENATE
TO: SB 103

BY SENATOR SHOWER

Page 2, line 25, following "industry":

Insert "; and

(3) two nonvoting members from the legislature, one of whom shall be appointed by the president of the senate and one by the speaker of the house of representatives"

Page 2, line 26, through page 3, line 3:

Delete all material and insert:

"(b) The public members of the board appointed under (a)(2) of this section shall serve staggered three-year terms. If a vacancy arises for a seat appointed under (a)(2) of this section, the governor shall, within 30 days after the vacancy arises, appoint a person to serve the balance of the unexpired term. A person appointed to fill the balance of an unexpired term shall serve on the board from the date of appointment until the expiration of the term.

(c) Board members appointed under (a)(2) of this section serve at the pleasure of the governor, and members appointed under (a)(3) of this section serve at the pleasure of the appointing authority; however, a public member may be removed by a majority vote of the board if the member misses more than two meetings in a calendar year and has not been previously excused or for other good cause."

Page 3, line 5, following the first occurrence of "the":

Insert "voting"

Page 3, line 6, following the third occurrence of "the":

Insert "voting"

Page 3, line 10, following the second occurrence of "the":

Insert "voting"

Page 5, lines 5 - 8:

Delete all material and insert:

"THE ALASKA MARINE HIGHWAY SYSTEM OPERATION AND PLANNING BOARD; STAGGERED TERMS. (a) Notwithstanding AS 19.65.220(b), enacted by sec. 2 of this Act, and AS 39.05.055, the governor shall appoint the initial public members of the Alaska Marine Highway System Operation and Planning Board to the seats established under AS 19.65.220(a)(2), enacted by sec. 2 of this Act, to staggered terms as follows:"

CHAIR MYERS objected for discussion purposes.

1:53:19 PM

SENATOR SHOWER explained that Amendment 4 would add two nonvoting members of the legislature to OPB, one appointed by the Senate President and the other appointed by the Speaker of the House.

These nonvoting members would liaise between the board and the legislature to address funding and other relevant issues.

1:53:47 PM

CHAIR MYERS related his understanding that Amendment 4 would add two nonvoting legislative members, but Amendment 5 would add legislative appointees as voting members.

1:54:19 PM

SENATOR KIEHL clarified that the distinction in Amendment 5 was that the legislature's presiding officers would appoint two public members to serve on the board; however, these two public member appointees would not be legislators.

CHAIR MYERS thanked him for the clarification. He solicited DOTPF's comments.

1:54:39 PM

MR. CARPENTER expressed concern about the separation of powers. He referred to a Legislative Legal Memo on the separation of powers [dated April 6, 2021, from Sandon M. Fisher to Representative Louise Stutes]. He related that the Department of Law was online to discuss it further.

1:55:26 PM

SENATOR SHOWER interjected that the legislative members would merely act as ex officio members to bring back information to the legislature. He related his understanding that the issue Mr. Carpenter described would only arise if the legislators were voting members.

1:55:52 PM

RACHEL WITTY, Chief Assistant Attorney General - Statewide Section Supervisor, Civil Division, Department of Law (DOL), Anchorage, Alaska, explained that some precedent existed for legislators to serve on advisory boards or task forces so long as these members did not have an actual role in executing or administering the law. There were also attorneys general opinions that agreed with the Legislative Legal Services opinion about not appointing legislators or giving them voting powers.

1:56:42 PM

SENATOR SHOWER referred to a memo from Legislative Legal Services [No specific reference was given; Original punctuation provided]. He read:

The fact that legislators serve on the board even as nonvoting members may raise dual office holding a separation of powers issue. The Alaska Constitution prohibits dual office holding and restricts the legislator from holding certain positions. The state government during the legislator's term of office for a period of one year after a legislator's term expires ...

[1:57:11 PM](#)

SENATOR SHOWER said he wanted the record to reflect that the committee investigated whether legislators could participate on boards and determined that the proposed language would not raise a constitutional issue as long as they were nonvoting members.

CHAIR MYERS pointed out Ms. Witty previously commented that precedent exists for legislators to serve on boards as nonvoting members. He said it seems as though this would follow the standard procedure of the legislature exercising oversight powers by serving as a nonvoting member on a board but not possessing executive powers.

[1:58:02 PM](#)

At ease

[1:58:37 PM](#)

CHAIR MYERS reconvened the meeting and withdrew his objection.

There being no further objection, Amendment 4 was adopted.

[1:59:01 PM](#)

SENATOR KIEHL moved to adopt Amendment 5, work order 32-GS1649\A.6:

32-GS1649\A.6

Fisher

4/2/21

AMENDMENT 5

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: SB 103

Page 2, line 9, through page 3, line 3:

Delete all material and insert:

"Sec. 19.65.220. Board composition. (a) The membership of the board consists of

(1) the commissioner of transportation and public facilities, or the commissioner's designee;

(2) 10 public members who are residents of the state and meet the following criteria:

(A) three members with experience in marine operating, maintenance, or vessel construction;

(B) three members with business experience, at least one of whom has experience in marine-related business;

(C) one member who represents an Alaska Native organization or tribe;

(D) one member who represents a community served by the Alaska marine highway system;

(E) one member, who may be retired, of a recognized union that represents employees of the Alaska marine highway system;

(F) one member with experience in restructuring businesses in the travel industry.

(b) The public member seats described in (a)(2) of this section shall be filled as follows:

(1) the president of the senate shall appoint two members who are each qualified under (a)(2)(A), (B), (C), (D), (E), or (F) of this section; members appointed under this paragraph serve at the pleasure of the president of the senate;

(2) after the appointments have been made under (1) of this subsection, the speaker of the house shall appoint two members who are each qualified to fill one of the remaining seats under (a)(2)(A), (B), (C), (D), (E), or (F) of this section; members appointed under this paragraph serve at the pleasure of the speaker of the house of representatives;

(3) after the appointments have been made under (1) and (2) of this subsection, the governor shall appoint six members who are qualified to fill the remaining seats under (a)(2)(A), (B), (C), (D), (E), or (F) of this section; members appointed under this paragraph serve at the pleasure of the governor.

(c) The public members of the board shall serve staggered three-year terms. If a vacancy arises on the board, the president of the senate, the speaker of the house of representatives, or the governor, as applicable, shall, within 30 days after the vacancy arises, appoint a qualified person to serve the balance of the unexpired term. However, if more than one seat on the board is vacant at the same time, then appointments to any vacant seat shall be made by the president of the senate for the number of members, if any, necessary to bring the total number of members of the board appointed by the president of the senate to two; the

speaker of the house shall then appoint the number of members, if any, necessary to bring the total number of members of the board appointed by the speaker of the house to two; the governor shall then appoint the number of members, if any, necessary to bring the total number of members of the board appointed by the governor to six. A person appointed to fill the balance of an unexpired term shall serve on the board from the date of appointment until the expiration of the term.

(d) A majority of the membership of the board may remove a public member if that member misses more than two meetings in a calendar year and has not been previously excused or for other good cause."

Page 5, lines 5 - 13:

Delete all material and insert:

"THE ALASKA MARINE HIGHWAY SYSTEM OPERATION AND PLANNING BOARD; STAGGERED TERMS. (a) Notwithstanding AS 19.65.220, enacted by sec. 2 of this Act, and AS 39.05.055, the president of the senate, the speaker of the house of representatives, and the governor, as applicable, shall appoint the initial public members of the Alaska Marine Highway System Operation and Planning Board to the seats established under AS 19.65.220(a)(2), enacted by sec. 2 of this Act, to staggered terms as follows:

- (1) the president of the senate shall appoint
 - (A) one member to serve a one-year term; and
 - (B) one member to serve a three-year term;
 - (2) after the appointments made under (1) of this subsection, the speaker of the house of representatives shall appoint
 - (A) one member to serve a one-year term; and
 - (B) one member to serve a three-year term;
 - (3) after the appointments made under (1) and (2) of this subsection, the governor shall appoint
 - (A) two members to serve a one-year term;
 - (B) three members to serve a two-year term;
- and
- (C) one member to serve a three-year term."

CHAIR MYERS objected for discussion purposes.

1:59:07 PM

SENATOR KIEHL explained that Amendment 5 would take a slightly different approach. Amendment 5 would direct the presiding officers of the legislature to appoint several public members, who

are not legislators, to serve as voting members on OPB. He recalled at least one existing board has legislators as voting members, although he could not recall which one.

CHAIR MYERS suggested that perhaps he was thinking of the redistricting board.

SENATOR KIEHL stated that SB 103 would establish OPB as an advisory board with every member serving at the governor's pleasure. He expressed concern that a governor, serving a single term, could replace the entire board, interfering with the desired goal to achieve long-term planning. Since OPB is an advisory board, the legislature's presiding officers could appoint several members, he said. In doing so, it would provide stability to the board.

[2:01:24 PM](#)

CHAIR MYERS stated that governors are elected every four years but the legislature convenes every two years, with potentially new presiding officers. He expressed concern that this might move the stability of OPB in the wrong direction. Further, one finding of AMHS's work group was to remove politics from AMHS. He expressed concern that this could interject an extra level of politics into the board.

[2:02:32 PM](#)

SENATOR KIEHL stated that it was not possible to avoid politics altogether. Even though presiding officers will change, it could still have the effect of stabilizing the board, he said. He wondered which approach was best, whether appointees should be members with competing interests who could work towards a common goal or if a single entity should appoint all the members of OPB.

SENATOR SHOWER asked how Amendments 4 and 5 would mesh.

[2:04:07 PM](#)

SENATOR MICCICHE explained that Amendment 4 would change how other seats were appointed.

[2:04:25 PM](#)

CHAIR MYERS concurred.

[2:04:30 PM](#)

SENATOR SHOWER asked if presiding officers' appointments would change under Amendment 5.

CHAIR MYERS answered that each presiding officer would appoint two members to OPB.

[2:04:51 PM](#)

SENATOR MICCICHE related his understanding that Amendment 5 would increase the board membership to 13 members, with two nonvoting legislative members.

SENATOR SHOWER said he was still unsure of the overall effect of the amendments.

CHAIR MYERS explained the difference between the two amendments. He stated that Amendment 4 would add two legislative members as nonvoting members to OPB. Amendment 5 would direct the presiding officers from each body to appoint two public members from each body for a total of four public members with voting privileges. The overall effect is that the legislature would appoint six OPB members, four of whom could vote and the governor would appoint six members to OPB who would not have voting privileges, he said.

[2:05:51 PM](#)

SENATOR KIEHL explained that Amendment 4 would add two nonvoting legislative members to OPB. Amendment 5 would not affect the nonvoting members. It would merely change who will appoint four of the 11 voting members.

SENATOR SHOWER said he appreciated the clarification.

[2:06:20 PM](#)

SENATOR MICCICHE moved to adopt [Conceptual Amendment 1 to] Amendment 5, such that [Sec. 19.65.220. Board composition (a)(2)] (C) would read, "Two members who represent communities served by the Alaska Marine Highway System, one of which would be a member who represents an Alaska Native organization; eliminate subparagraph (D), and [renumber] subparagraph (F).

SENATOR MICCICHE explained that the committee previously discussed the value of having an Alaska Native organization represented on the board. However, the Alaska Native board member should also represent a community served by AMHS.

SENATOR KIEHL asked whether this would reduce the total board membership to nine members.

[2:07:39 PM](#)

SENATOR MICCICHE answered no. He explained that subparagraph (C) would add two members representing communities served by the

Alaska Marine Highway System, one of whom would be a person representing an Alaska Native organization.

CHAIR MYERS asked if subparagraph (E) would remain.

SENATOR MICCICHE confirmed that subparagraphs (E) and (F) would not be deleted but would be relettered as subparagraphs (D) and (E).

SENATOR SHOWER related his understanding that subparagraph (D) language would fold into subparagraph (C).

[2:08:28 PM](#)

SENATOR KIEHL clarified that the language in subparagraph (D) to add a member [who represents a community served by AMHS] would be folded into subparagraph (C), which would add two additional board members [who represents an Alaska Native organization or tribe]. He asked whether the language in subparagraph (F) to add one member [with experience in restructuring businesses in the travel industry] would be deleted.

SENATOR MICCICHE answered no. He stated that the subparagraph (F) language would remain, but it would be relettered.

SENATOR KIEHL said he agrees with the changes made by Conceptual Amendment 1 to Amendment 5.

There being no further objection, Conceptual Amendment 1 to Amendment 5 was adopted.

[2:09:06 PM](#)

CHAIR MYERS stated that the committee previously discussed shrinking the overall board from 10 to 8 public members.

SENATOR KIEHL suggested not doing so at this point.

CHAIR MYERS agreed with his suggestion.

[2:09:35 PM](#)

SENATOR MICCICHE asked for clarification on the mechanics of Amendment 5. He pointed out that members would be appointed in three areas: [a member representing an Alaska Native organization or tribe, a union representing AMHS employees, and a member with experience in restructuring businesses] but the lettering would change. He referred to the appointments on page 2 of Amendment 5 in paragraphs (2) and (3). He asked if this would create any

issue. He wanted to be sure that people will not try to appoint members to the same board member positions.

SENATOR KIEHL explained that Amendment 5 would lay out the order of the initial appointments with each appointing authority making appointments to fill any vacant positions.

[2:11:12 PM](#)

MR. MILLS stated that the Department of Law (DOL) discussed the legal issues related to the nonvoting members. He expressed concern about a separation of powers issue and the governor's constitutional authority related to appointments. He deferred to Ms. Witty to explain the problem.

[2:12:02 PM](#)

MS. WITTY stated that the Department of Law has relied on the doctrine of separation of powers in several opinions disapproving the legislature designating appointments to boards and commissions. The department has taken the position that the appointment authority is reserved to the governor. This is distinct from naming in the statute that a specific position in the legislature will hold that chair, she said. This language would give the legislature the power to appoint a member, which the department has opined is reserved to the executive branch under the Alaska Constitution.

[2:12:58 PM](#)

MR. MILLS commented that the department provided a Legislative Legal Services memo [dated April 6, 2021] from Sandon Fisher, Legislative Counsel to Representative Stutes] to the House State Affairs Committee on a related bill on this topic.

[2:13:22 PM](#)

SENATOR BISHOP asked if the legislature must approve these appointments in joint session.

MS. WITTY answered that was the typical process.

[2:14:02 PM](#)

At ease

[2:16:23 PM](#)

CHAIR MYERS reconvened the meeting.

SENATOR KIEHL, in response to Senator Bishop, offered his belief that the legislature would not confirm these appointments since OPB is an advisory board without the ability to promulgate

regulations or issue licenses. Thus, the legislature does not have the constitutional power to require legislative confirmation. He highlighted two commissions in which the legislature's presiding officers appointed public voting members to serve: the Citizens' Advisory Commission on Federal Areas and the Alaska Minerals Commission.

[2:17:29 PM](#)

SENATOR SHOWER remarked on a separation of powers issue. He pointed out that half of the Judicial Council's members are appointed by a nongovernmental body, the Alaska Bar Association. He offered his view that this probably should be challenged in court.

[2:18:33 PM](#)

CHAIR MYERS pointed out that some amendments the committee will consider would require OPB to approve plans. He said he was unsure whether that would raise any separation of powers concerns.

[2:19:30 PM](#)

SENATOR KIEHL acknowledged that raises issues to contemplate.

[2:19:56 PM](#)

SENATOR MICCICHE suggested that the matter could be addressed later, if necessary.

CHAIR MYERS agreed.

[2:20:33 PM](#)

CHAIR MYERS maintained his objection.

A roll call vote was taken. Senators Kiehl, Shower, Bishop, and Micciche voted in favor of Amendment 5 and Senator Myers voted against it. Therefore, Amendment 5, as amended, was adopted by a 4:1 vote.

[2:21:12 PM](#)

CHAIR MYERS moved to adopt Amendment 6, work order 32-GS1649\A.11:

32-GS1649\A.11
Fisher
4/2/21

AMENDMENT 6

OFFERED IN THE SENATE
TO: SB 103

BY SENATOR MYERS

Page 2, line 26:
Delete "three-year"
Insert "eight-year"

Page 5, lines 5 - 13:

Delete all material and insert:

"THE ALASKA MARINE HIGHWAY SYSTEM OPERATION AND PLANNING BOARD; STAGGERED TERMS. (a) Notwithstanding AS 19.65.220(b), enacted by sec. 2 of this Act, and AS 39.05.055, the governor shall appoint the initial public members of the Alaska Marine Highway System Operation and Planning Board to the seats established under AS 19.65.220(a)(2), enacted by sec. 2 of this Act, to staggered terms as follows:

(1) one member shall be appointed to serve a one-year term;

(2) one member shall be appointed to serve a two-year term;

(3) two members shall be appointed to serve three-year terms;

(4) one member shall be appointed to serve a four-year term;

(5) one member shall be appointed to serve a five-year term;

(6) two members shall be appointed to serve six-year terms;

(7) one member shall be appointed to serve a seven-year term; and

(8) one member shall be appointed to serve an eight-year term."

SENATOR SHOWER objected for discussion purposes.

2:21:23 PM

CHAIR MYERS explained that Amendment 6 would change OPB board member terms from three years to eight years to help remove politics. He stated that if board member terms were to remain at three years, all OPB's members would lapse during one gubernatorial term.

SENATOR MICCICHE asked whether the sponsor of Amendment 6 would consider changing board terms from eight to four years, considering that these board member terms were staggered. If so, he could support Amendment 6, he said. He suggested that it could result in potential board members being unwilling to commit to serving because it was for such a long period.

[2:23:10 PM](#)

SENATOR BISHOP agreed. He expressed concern that it might shrink the pool of potential candidates.

[2:23:30 PM](#)

SENATOR SHOWER directed attention to another amendment, not yet considered, that would change board terms to five years. He stated his support to reduce board member terms to less than eight years.

[2:24:06 PM](#)

SENATOR MICCICHE moved to adopt Conceptual Amendment 1 to Amendment 6 to reduce the board terms from eight years to four years.

CHAIR MYERS objected for discussion purposes.

SENATOR SHOWER acknowledged the goal was to create a nonpolitical board.

SENATOR MICCICHE offered that creating four-year terms would provide a healthy mix. It would mean that some of the governor's appointees would remain once the governor leaves office.

CHAIR MYERS removed his objection.

There being no further objection, Conceptual Amendment 1 to Amendment 6 was adopted.

CHAIR MYERS solicited Mr. Mill's comments.

[2:26:13 PM](#)

MR. MILLS responded that it made sense to increase board member terms from three to four years to retain members' specialized skill sets. He related that the administration did not object to the change.

[2:26:51 PM](#)

At ease

[2:27:56 PM](#)

CHAIR MYERS reconvened the meeting.

CHAIR MYERS highlighted that the committee needed to consider the initial staggered terms.

[2:28:33 PM](#)

SENATOR MICCICHE suggested that paragraphs (1) through (4) [on lines 12-15 of Amendment 6] would resolve the staggered terms. SENATOR MICCICHE suggested that paragraphs (1) through (4) [on lines 12-15 of Amendment 6] would resolve the staggered terms. He suggested considering amending Amendment 6 to have two members serve a one-year term and two members serve a two-year term. He said once four years passed, the cycle would repeat.

[2:29:09 PM](#)

CHAIR MYERS [referred to lines 12 to 19 of Amendment 5]. He suggested eliminating paragraphs (5) through (8) and changing board member terms in paragraphs (1) and (2) to two-year terms and three-year terms in paragraphs (3) and (4).

[2:29:57 PM](#)

SENATOR MICCICHE moved to adopt Conceptual Amendment 2 to Amendment 6.

SENATOR MYERS objected for purposes of discussion.

SENATOR MICCICHE explained Conceptual Amendment 2 to Amendment 6.

He referred to lines 12-15 of Amendment 6, which would read, as follows:

- (1) one member shall be appointed to serve a two-year term;
- (2) one member shall be appointed to serve a two-year term;
- (3) two members shall be appointed to serve three-year terms;
- (4) two members shall be appointed to serve three-year terms; and to delete paragraphs (5) through (8) on lines 16 through 19.

SENATOR MYERS removed his objection.

There being no further objection, Conceptual Amendment 2 to Amendment 6 was adopted.

CHAIR MYERS stated that Amendment 6 was before the committee.

SENATOR SHOWER removed his objection.

There being no further objection, Amendment 6, as amended, was adopted.

[2:31:03 PM](#)

SENATOR KIEHL withdrew Amendment 7, [work order 32-GS1649\A.2].

[2:31:16 PM](#)

SENATOR BISHOP moved to adopt Amendment 8, work order 32-GS1649\A.16:

32-GS1649\A.16
Fisher
4/7/21

AMENDMENT 8

OFFERED IN THE SENATE
TO: SB 103

BY SENATOR BISHOP

Page 1, line 2, following "Board;":

Insert "**relating to the powers and duties of the
Alaska Marine Highway System Operation and Planning
Board;**"

Page 3, line 12, following "AS 44.62.310(b)":

Insert "The board shall hold at least one meeting a
year in each of the following:

- (1) Southeast Alaska;
- (2) Kodiak;
- (3) Anchorage."

CHAIR MYERS objected for discussion purposes.

[2:31:22 PM](#)

SENATOR BISHOP explained that Amendment 8 would require the board to hold at least one meeting per year in each of the following regions: Southeast Alaska, Kodiak, and Anchorage. This language was identical to the language used by the Board of Fisheries, which has requirements to hold five meetings per year in five separate regions of the state. He explained that this would allow the public more access to provide input and participate at board meetings. It would also engage board members in communities that rely on the ferry service.

SENATOR SHOWER asked if allowing members to participate by teleconference was due to COVID-19.

CHAIR MYERS pointed out that natural disasters like earthquakes could happen in Alaska.

SENATOR BISHOP answered he was unsure about the Board of Game's protocol. He deferred to DOL.

[2:33:19 PM](#)

CHAIR MYERS solicited a response from DOL as to whether the Board of Fisheries and the Board of Game members could participate by teleconference.

MS. WITTY offered to research this and report back to the committee.

[2:33:53 PM](#)

SENATOR MICCICHE explained that the process was in place for COVID-19. He acknowledged that emergency regulations could address it if the board encountered something similar.

SENATOR BISHOP wondered what policy OPB would adopt for its members.

[2:34:49 PM](#)

CHAIR MYERS withdrew his objection.

There being no further objection, Amendment 8 was adopted.

[2:35:02 PM](#)

MR. CARPENTER asked if the committee might want to add language "Notwithstanding unmitigated circumstances" or something similar.

SENATOR MICCICHE offered his belief that provisions were made to allow other boards and commissions to meet. He suggested that adding the language might let someone define "unmitigated circumstances."

[2:36:12 PM](#)

SENATOR SHOWER directed attention to page 3, line 11 of SB 103, which read, "Meetings may be conducted by teleconference."

[2:36:32 PM](#)

SENATOR SHOWER moved to adopt Amendment 9, work order 32-GS1649\A.9:

32-GS1649\A.9
Fisher
4/2/21

AMENDMENT 9

OFFERED IN THE SENATE
TO: SB 103

BY SENATOR SHOWER

Page 1, line 2, following **"Board;"**

Insert **"relating to the powers and duties of the Alaska Marine Highway System Operation and Planning Board and the commissioner of transportation and public facilities;"**

Page 3, lines 20 - 25:

Delete all material and insert:

"Sec. 19.65.280. Powers, duties, and functions. (a) The commissioner of transportation and public facilities in conjunction with the board shall, without regard to political affiliation, solicit, interview, and recruit the head of the division of marine transportation, who shall report to and function at the direction of the board."

CHAIR MYERS objected for discussion purposes.

[2:36:40 PM](#)

SENATOR SHOWER explained that Amendment 9 was an attempt to strike a balance to allow OPB to have more influence over AMHS's director. The committee previously expressed concern that the department often ignored the prior board input.

[2:37:44 PM](#)

SENATOR MICCICHE asked for the process used to hire the current director.

MR. CARPENTER explained the current process. He said that as general manager Captain John Falvey runs AMHS. He envisioned that DOTPF was having internal discussions on the "head of the division of marine transportation" position in the commissioner's office. That person would work collectively with the board and report to the commissioner's office. He expressed concern with the language "shall report to and function at the direction of the board" when AMHS was still technically within the purview of DOTPF and the commissioner's office. He was unsure how this would work. He envisioned OPB would have a commissioner designee serving on the board, and a person who works as a liaison between the board and the commissioner's office to provide information necessary for the board to make its decisions.

[2:40:08 PM](#)

CHAIR MYERS clarified that the question was how Captain Falvey was appointed.

MR. CARPENTER answered that Captain Falvey currently serves in an exempt position at the commissioner's discretion and goes through the governor's confirmation process.

SENATOR KIEHL stated that Captain Falvey's position historically has been a deputy commissioner, a division director, and an executive director of AMHS. He noted that MTAB was formed by then-Governor Murkowski. Although he prefers this language, Legislative Legal Services indicated that a board could not hire an executive branch employee. He stated that he would support this concept.

[2:41:51 PM](#)

SENATOR SHOWER asked the record to reflect he contended was that commissioners could ignore the board; that it was time to do something different. He expressed concern that the head of the marine highway system would still work for the commissioner. He maintained his interest in putting in place a structure that would allow the board to make decisions. He pointed out that currently, not the governor appoints every board.

CHAIR MYERS solicited a response from Ms. Witty.

MS. WITTY offered to research this and report back to the committee.

[2:44:48 PM](#)

CHAIR MYERS withdrew his objection.

[2:45:02 PM](#)

SENATOR MICCICHE asked the sponsor to consider tabling the amendment to await an answer from DOL.

SENATOR SHOWER expressed his willingness to wait for another opinion.

[2:45:50 PM](#)

SENATOR SHOWER moved to table Amendment 9.

CHAIR MYERS stated that Amendment 9 was tabled.

[2:46:07 PM](#)

SENATOR KIEHL moved to adopt Amendment 10, work order 32-GS1649\A.3:

AMENDMENT 10

OFFERED IN THE SENATE
TO: SB 103

BY SENATOR KIEHL

Page 3, line 30:

Delete ". The department shall"

Insert "and to the senate secretary and chief clerk
of the house of representatives and"

Page 4, line 19, following "governor":

Insert "and to the senate secretary and chief clerk
of the house of representatives"

Page 4, line 21, following "AS 19.65.011":

Insert "and notify the legislature that the report
is available"

Page 5, line 20, following "governor":

Insert "and the legislature"

CHAIR MYERS objected for discussion purposes.

[2:46:12 PM](#)

SENATOR KIEHL explained that Amendment 10 would require the board to submit its reports and recommendations to the legislature, the department, and the governor.

SENATOR MYERS removed his objection. There being no further objection, Amendment 10 was adopted.

[2:47:09 PM](#)

SENATOR KIEHL moved to adopt Amendment 11, work order 32-GS1649\A.4:

AMENDMENT 11

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: SB 103

Page 4, following line 25:

Insert a new subsection to read:

"(e) Not later than August 1 of each year, the board shall submit proposed operating and capital budgets for the Alaska marine highway system for the next fiscal year to the governor and to the senate secretary and chief clerk of the house of representatives and notify the legislature that the proposed budgets are available."

Reletter the following subsection accordingly.

Page 5, line 21:

Delete "AS 19.65.280"

Insert "AS 19.65.280(d)"

CHAIR MYERS objected for discussion purposes.

2:47:12 PM

SENATOR KIEHL explained that Amendment 11 would require the board to submit proposed AMHS operating and capital budgets to the governor, Senate Secretary and Chief Clerk's office. He clarified that the governor would propose the budgets but this would allow the legislature to view OPB's suggested budget and compare it to the governor's proposed budgets.

2:48:06 PM

CHAIR MYERS remarked that the governor does not need to follow OPB's suggested budget decisions.

SENATOR SHOWER asked if any issues arise in terms of budgetary timelines.

2:49:23 PM

SENATOR KIEHL related his understanding that departments work with the Office of Management and Budget a little earlier.

MR. CARPENTER answered that August 1 might be a little early in the process. He suggested that September 1 might be a better date. He asked whether the committee might consider this at a subsequent meeting.

SENATOR KIEHL made a motion to table Amendment 11.

CHAIR MYERS stated that Amendment 11 was tabled.

[2:51:11 PM](#)

SENATOR SHOWER moved to adopt Amendment 12, work order 32-GS1649\A.13:

32-GS1649\A.13
Fisher
4/5/21

AMENDMENT 12

OFFERED IN THE SENATE

TO: SB 103

Page 1, line 1, following "Act":

Insert "**relating to the duties of the Department of Transportation and Public Facilities;**"

Page 4, lines 26 - 27:

Delete all material and insert:

"(e) The Department of Transportation and Public Facilities shall provide to the board information necessary for the board to carry out its duties."

CHAIR MYERS objected for discussion purposes.

[2:51:19 PM](#)

SENATOR SHOWER explained that Amendment 12 would require DOTPF to provide information to OPB.

CHAIR MYERS removed his objection. There being no further objection, Amendment 12 was adopted.

[2:52:02 PM](#)

CHAIR MYERS moved to adopt Amendment 13, work order 32-GS1649\A.15:

AMENDMENT 13

32-GS1649\A.15
Fisher
4/7/21

OFFERED IN THE SENATE

TO: SB 103

BY SENATOR MYERS

Page 1, line 1, following "Act"

Insert "relating to the duties of the Department of Transportation and Public Facilities;"

Page 4, following line 31:

Insert a new bill section to read:

"* **Sec. 3.** AS 44.42.050(a) is amended to read:

(a) The commissioner shall develop a comprehensive, intermodal, long-range transportation plan for the state. The commissioner shall incorporate the comprehensive long-range plan prepared under AS 19.65.011 into the plan developed under this section. The plan may be developed in multiple documents that address logical components, including geographic areas, modes of transportation, transportation corridors, systems, and other distinct subjects relevant to transportation planning. The components of the plan shall be revised as the commissioner determines appropriate. In developing and revising the state plan, the commissioner shall conform to the requirements for the eligibility and use of federal and other funds, as applicable. Upon approval of each component of the plan by the commissioner, the commissioner shall transmit notice of the approval of that component to the governor and to the legislature."

Renumber the following bill sections accordingly.

SENATOR SHOWER objected for discussion purposes.

[2:52:10 PM](#)

CHAIR MYERS explained that Amendment 13 would require DOTPF to incorporate the long-range plan completed by the newly created advisory board into the department's comprehensive Intermodal Long-range Transportation Plan. He explained that the department has ignored the previous board's suggestions so this would provide OPB with more authority.

[2:53:04 PM](#)

SENATOR MICCICHE said he understood the intent of Amendment 13. He expressed concern that a board and administration might not be balanced. He stated that there should be checks and balances in the system. He expressed his concern that this language was too strong. He said he would like OPB to have sufficient authority but he did not want to force the department to incorporate the board's plan.

[2:55:18 PM](#)

SENATOR KIEHL stated that Amendment 14 would impose stronger language. He offered his belief that Amendment 13 would still give the department some discretion but would require the department to give the proposed plan serious consideration.

SENATOR MICCICHE shall incorporate does not mean it should be incorporated in its entirety. He agreed Amendment 13 would provide some flexibility so he could support it over Amendment 14.

[2:57:44 PM](#)

SENATOR SHOWER removed his objection. There being no further objection, Amendment 13 was adopted.

[2:58:13 PM](#)

SENATOR KIEHL withdrew Amendment 14.

[2:58:39 PM](#)

SENATOR SHOWER moved to adopt Amendment 15, work order 32-GS1649\A.14:

32-GS1649\A.14
Fisher
4/5/21

AMENDMENT 15

OFFERED IN THE SENATE

TO: SB 103

Page 1, line 2, following "Board;"

Insert "**relating to the powers and duties of the Alaska Marine Highway System Operation and Planning Board;**"

Page 5, lines 20 - 21:

Delete all material and insert:

"REPORTS. Notwithstanding AS 19.65.280(c) and (d), enacted by sec. 2 of this Act, the Alaska Marine Highway System Operation and Planning Board shall prepare and submit its initial reports to the governor under AS 19.65.280(c) and (d), enacted by sec. 2 of this Act, not later than 90 days after the date the governor finishes appointing the initial members of the Alaska Marine Highway System Operation and Planning Board."

CHAIR MYERS objected for discussion purposes.

[2:58:45 PM](#)

SENATOR SHOWER explained that Amendment 15 would require OPB to prepare and submit an initial report to the governor within 90 days.

CHAIR MYERS removed his objection. There being no further objection, Amendment 15 was adopted.

[SB 103 was held in committee.]

[2:59:53 PM](#)

There being no further business to come before the committee, Chair Myers adjourned the Senate Transportation Standing Committee meeting at 2:59 p.m.